

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5742 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

FIREJKHAN FATTAKHAN PATHAN

Versus

COMMISSIONER OF POLICE

Appearance:

MR SATISH R PATEL for Petitioner

MR KC SHAH, AGP for Respondents.

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 10/09/96

ORAL JUDGEMENT

1. By way of this petition under Article 226 of the Constitution of India the petitioner-detenu-Firej Khan Fattakhan Pathan has brought under challenge the detention order dated 8/4/1996 rendered by the respondent no.1 u/S. 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (Act No. 16 of 1985), hereinafter referred to as 'the PASA Act'.

2. The grounds on which the impugned order of detention has been passed appear at Annexure-C to the petition. They inter-alia indicate that the petitioner is keeping with him country revolver without any licence or permit in that respect, causing hurt to innocent people, causing damage to their property and carrying on such criminal and anti-social activity by himself and with the aid of his associates. The petitioner by himself and with the aid of his associates has also been indulging in extorting money from innocent people/businessmen. Following offences have been registered in the Gaekwad Haveli Police Station against him :-

- 1) CR 433/92 U/Ss.25/1/B, A of the Arms Act read with section 135(1) of the Bombay police Act. Weapons involved is country revolver Pending trial.
- 2) CR 247/95 U/Ss.25/1/A, 27,29 of the Arms Act. Country pistol. Pending investigation.
- 3) CR 71/93 U/Ss.324, 294,114,427 of the IPC read with sec. 135(1) of B.P. Act. Pending in Court.
- 4) CR 100/95 U/Ss. 395, 397, 34 of the IPC r/w. sec. 135 (1) of Bombay Police Act. Pending in Court.

It is not in dispute that out of the last mentioned offences of the year 1995 the last one is dated 18/6/1995 and the petitioner was released on bail on 22/9/1995; that is with regard to CR No.247/95. It is not in dispute that even with regard to CR No.100/95 the petitioner has been on bail.

3. Over and above these cases of it has been recited in the grounds that confidential statements have been recorded on 3/4/96, 4/4/96, 5/4/96 and 6/4/96 verified on 8/4/96, referring to the incidents dated 15/3/1996 and 24/3/1996. With regard to the first incident it has been alleged that the petitioner had been demanding money of instalments in the sum of Rs.150/- and when questioned with regard to the purpose of demand, he had threatened and beaten the witnesses and had rushed at the people collected at the time of incident with knife. With regard to the second incident it has been alleged that the petitioner travelled by the vehicle of the witness and when the witness demanded fare the petitioner got excited, dragged the witness out of the vehicle and had beaten him. When the witness shouted for help the people

collected there, but since the petitioner rushed at the people with knife in his hands, they dispersed. This is how, it is alleged, the petitioner has caused atmosphere of fear at the time of the concerned incidents.

4. I have heard the learned advocate for the petitioner and learned AGP for the State. The petitioner has challenged the aforesaid order of detention on number of grounds, inter-alia on the ground of delay as can be seen from para. 13 of the petition, which reads as under :

"The petitioner submits that last offence registered as C.R. No. 100 of 1995 on 4/2/1995, the petitioner is released on bail on 11/7/1995 and statements of witnesses are recorded on 3/4/1996, 4/4/1996, 5/4/1996 and 6/4/1996 and the order of detention has been passed on 8/4/1996, therefore, order of detention passed after more than 14 months of the last registered offence. Thus it is great delay in passing the order of detention, and continued detention has become illegal."

5. Although there is no affidavit in reply to the aforesaid ground of delay, it has been submitted by Mr. K.C. Shah, Ld. AGP that if the dates of the incidents narrated by the witnesses have been taken into consideration, it cannot be said that there is delay in passing the impugned order of detention. In reply it has been submitted that though the C.R.No. 100 of 1995 has been mentioned last, the 2nd registered offence C.R. No. 247 of 1995 is the last registered offences dated 18/6/1995 and even then there is delay between the last registered case and the impugned order of detention. Mr. Patel has referred to a decision of this Court rendered on 15/10/1993 (Coram : S.M. Soni and S.D. Shah, JJ. per Soni, J.) in Special Criminal Application No. 1060 of 1993, where also the time gap between the last of the incidents narrated by the witness and the order of detention there was almost similar. The Division Bench has also placed reliance upon the decision of the Hon'ble Supreme Court in the case of Pradeep Nilkanth Paturkar v/s. S. Ramamurthi & ors. reported in AIR 1994 SC 656 for upholding a ground of delay and cutting short the continued detention. In P.N. Puturkar's case reference was made to an earlier decision of the Apex Court in the case of A.T. Abul Rahman v. State of Kerala (1989) 4 SCC 741 : AIR 1990 SC 225). Following observations have been quoted :-

"The question whether the prejudicial activities of a person necessitating to pass an order of detention is proximate to the time when the order is made or the live-link between the prejudicial activities and the purpose of detention is snapped depends on the facts and circumstances of each case. No hard and fast rule can be precisely formulated that would be applicable under all circumstances and no exhaustive guidelines can be laid down in that behalf. It follows that the test of proximity is not a rigid or mechanical test by merely counting number of months between the offending acts and the order of detention. However, when there is undue and long delay between the detention order, the Court has to scrutinise whether the detaining authority has satisfactorily examined such a delay and afforded a tenable and reasonable explanation as to why such a delay has occasioned, when called upon to answer and further the Court has to investigate whether the causal connection has been broken in the circumstances of each case."

In the case before the Supreme Court there was a delay of 5 months and 8 days from the date of registration of the last case and of more than 4 months from the submission of the proposal. The statements were obtained only after detenu became successful in getting bail in all the cases registered against him. In so far as the present case is concerned, the facts as noted above speak for themselves. The result is that the decision in P.N. Paturkar's case (supra) would be applicable to the facts of the present case.

5. The result is that the decision in P.N. Paturkar's (supra) as applied by the Division Bench in S.C.A. No. 1060 of 1993 would be applicable to the facts of the present case. In the facts and circumstances of the present case, therefore, the ground of delay for snapping continued detention of the petitioner has clearly been established.

6. There are other grounds of challenge levelled against the impugned order of detention. However, in view of the fact that the petitioner would succeed directly on the strength of decision of P.N. Paturkar (supra), it is not necessary to deal with the other grounds. Hence, following order is passed :

The impugned order of detention is hereby quashed and set aside. The petitioner-detenu-Rifejkhani Fattakhan

Pathan shall be forthwith set at liberty if he is not required to be detained in any other case. Rule made absolute accordingly.

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